Supreme Court of the Hawaiian Islands—In Banco. In Vacation by Consent.

ASSUMPSIT.

THE BOARD OF IMMIGRATION AND JOAO RODRIGUES FERNANDES VS. THE HAKALAU PLANTATION, A CORPORATION.

BEFORE JUDD, C. J., M'CULLY, PRESTON, BICKERTON AND DOLE J. J.,

Opinion of the Court by DOLE, J.

This is a submission to the Supreme Court in Banco under the provisions of Sections 1140–1143 of the Civil Code. The agreed statement of facts is as follows:

1st. That the defendant is a duly incorporated corporation, incorporated under the laws of the State of California, and doing business in the Hawaiian Kingdom.

2d. That on the 27th day of June, A. D. 1884, the plaintiff, Joao Rodriguez Fernandes entered into a contract of service with the Hawaiian Board of Immigration, one of the plaintiffs hereto, and was duly assigned by said Board, in accordance with said contract, to labor for the defendant, a copy of which said contract is hereto attached and marked exhibit "A" and has duly performed said contract.

3d. That a certain clause of said contract reads as follows, viz: "That "the party of the first part in "his above specified capacity binds "himself that the Board of Immi"gration shall pay monthly to the "party of the second part, as long as "this contract lasts, and at the end "of each 26 days service performed, "sixteen dollars to bachelors of 18 "years and upwards and married "men without children, married men "with one child under 12 years, two "dollars per month more, and with "more than one child under that "age, four dollars per month more."

4th. That the plaintiff Joao Rodrigues Fernandes is a married man and since the date of said contract, on the 22d day of March, 1885, has had born to him a child, who now and ever since has been living with and supported by him.

5th. That plaintiffs claim that under said contract the said laborer is entitled to $2 a month extra from the said 22d day of March, 1885, until the termination of said contract, on the ground that he is a "married man with one child under 12 years;" but that the defendant refuses to pay the same, alleging as reason for such refusal that said clause in said contract relates only to children born at the time of making such contract, and not to children born thereafter.

BY THE COURT:—It was ascertained from an inspection of the contract in question, Exhibit "A," that the plaintiff Fernandes was married before the contract was made.

The contract referred to was executed in Funchal, and is expressed in general terms which include all classes of prospective laborers, and may be said to be an agreement to engage the laborer or furnish him with employment upon his arrival at the Hawaiian Islands, at such wages as his peculiar circumstances entitle him to, according to the terms of such agreement.

After the arrival of the plaintiff Fernandes at the Hawaiian Islands, he was, in pursuance of the said agreement, directed by the Board of Immigration to work for the Hakalau Plantation Company—the defendant in this case; and the said company joined with the Board of Immigration in the execution of certain stipulations whereby it bound itself to carry out the terms of the said agreement as the employer of the plaintiff Fernandes. This undertaking is dated October 3d, 1884. The child was born March 22d, 1885.

If the child had been born after the execution of the original agreement but before October 3d, 1884, the date of the execution of the said stipulations between the defendant and the Board of Immigration, it might be well argued, that the employer would have been bound by the status of the laborer at that date as to children, that is, that the covenant of the Board of Immigration to pay "married men with one child under 12 years, two dollars per month more," etc., applies to the time of the beginning of the service, and that the employer who is substituted for the Board of Immigration as the party who receives the benefit of the labor performed and pays for it, would be liable for the extra pay on account of the children then living. But the facts in this case show that this child had not been born to the plaintiff Fernandes either at the date of the original agreement or of the agreement between the Board of Immigration and the defendant.

It seems to us that, without express and unequivocal words to that effect in the original agreement, it cannot be held that the contingency of the birth of children after the beginning of service, was contemplated. Such a conclusion would be conjectural, and inconsistent with the principles of construction of contracts. It would have been easy if such had been the intention of the parties, to have so expressed it by the addition of another sentence to the contract.

It is a principle of construction that a contract shall be interpreted with reference to the time when it was made, and to the circumstances existing at that time.

It would be unjust to parties to enlarge their liability on account of subsequent contingencies, unless such possible increase of liability was agreed upon at the date of the contract and plainly expressed in its terms. To hold a party to such additional liability where it was not expressly provided for, would be to hold him to the performance of a new contract to which he was a stranger, or one that was liable to vary from time to time—as children should be born or die—without special provisions therefor.

We are therefore of the opinion that the defendant is not liable upon the facts submitted, and is entitled to judgment.

L. A. Thurston, President Board of Immigration, appeared for Plffs. F. M. Hatch, for Deft.

Dated Honolulu, March 12, 1888.

Supreme Court of the Hawaiian Islands.

BEFORE THE FULL COURT.

IN RE Z. KALAI, POLICE JUSTICE OF NORTH KOHALA, HAWAII.

Opinion of the Court per JUDD, C. J.

The respondent Z. Kalai, Esq., who is Police Justice of North Kohala, Hawaii, having first received his appointment to that office on the 1st October, 1884, was complained of by the Attorney-General according to the provisions of Section 914 of the Civil Code as amended by the Act of 1866, and he was regularly cited to appear and answer the charges.

The complaint alleges substantially, as good cause for his removal from office, that pending the trial of one M. R. Freitas in Respondents' Court, on the charge of selling spirituous liquors without a license, it was agreed between said Freitas and respondent that in consideration of a bribe in money to be paid by Freitas to respondent, the latter would acquit him of the charge; that on the 7th November last, respondent did acquit Freitas and receive from him on the next day the sum of $200. The complaint contains also a general charge that respondent is notoriously dishonest, corrupt and unreliable in the discharge of his judicial functions and totally unfit to hold a judicial office.

Upon a careful investigation of the evidence we find the substantial facts to be that very shortly previous to the 31st October last, the day when Freitas was arrested upon the warrant charging him with selling spirituous liquors without a license, the Judge had borrowed $50 of him, to be repaid in a fortnight without interest, Freitas having only been in business in Kohala as a storekeeper some two months and being a comparative stranger to the Justice who, though being quite extensively engaged in business had had no previous dealings with this man, not being a regular customer of his, only having bought $1 worth of goods from him.

On the evening of the day of his arrest, Freitas, not being acquainted with the Hawaiian language, took one Francisco Cano who speaks Hawaiian well, with him and went to the Judge's house, visiting the Deputy Sheriff on the way. Cano acted as interpreter between Freitas and the Judge and says that Freitas asked the Judge through him for advice as to what he had best do, that he had sold no liquor as the Judge well knew, and finally said if the Judge would help him he would give him $50, to which the Judge nodded an assent and said he must put his defence on by witnesses. They found the Judge lying on a mat in his bedroom, reading, and Freitas and Cano sat near the door, and Cano finally sat down on the mat. When the conversation was finished the Judge and Freitas went out on to the verandah alone and Cano heard the chink of money, his inference being that coin passed between them. The trial began on the 3d November, and the Court heard the three witnesses for the prosecution and four of the witnesses for the defence and took an adjournment to the 7th. That evening Freitas' son and bookkeeper went with Cano to the Judge's house at about 9 o'clock and told the Judge, as they had told the Deputy Sheriff on the way over, that the witnesses for the prosecution owed Freitas debts at the store and wanted to get out of them by prosecuting him on a false charge. The Judge said if you have good evidence it will be all right, and you bring your account books and if they show what you say, have them in Court.

On the way to Court on the 7th, the Judge told Freitas' attorney to stop in and get the books of account to be used as evidence. The Judge heard the rest of the evidence and acquitted Freitas, saying, among other things, that the books showed that the witnesses for the prosecution were debtors of Freitas. The Judge's explanation is this: It was a common defence to storekeeper's bills that they were really for liquor, which could not legally be collected. The next day the Judge asked for a loan of $50 from Freitas and it was made to him on the 9th, Freitas taking it to him at his house and the Judge giving him a note due in one month, which is not yet paid.

The Judge admits that he borrowed $50 from Freitas a week or so before the arrest, and borrowed another $50 from him two days after his acquittal and got an extension of the former loan at the same time. Freitas himself substantiates this and they both say the first $50 was repaid, the Judge says in January last.

The Judge denies the corrupt offer to bribe him and his acceptance of any money from Freitas to influence his judgment in the case.

We are much impressed with the truthfulness of Cano, but are unwilling upon his testimony alone to come to the conclusion that the money was actually paid to the Judge as a bribe. But the Respondent's utter want of appreciation of the dignity and purity which should surround a Magistrate which is evidenced by his being a willing party to two interviews between him and a man charged with an offense, in which his case was discussed and in which he suggested points of defence and his seeking loans without interest from a defendant in such circumstances would indicate that he is not unassailable by corrupt influences.

Who could trust a Judge that would do such things? The community would have a right to believe that he was susceptible to bribes, and as it is essential to the proper administration of Justice that the community should have confidence in the integrity of those who administer the law, we do not feel authorized to allow the Respondent to longer remain in this responsible position.

There is other similarly objectionable conduct proven against him. A policeman, T. B. Arcia, says, that a Chinaman, Ahoe, was to be tried one morning for an offense and stood at the door of the Court House waiting for the Judge with some money in his hand, and when he came shook hands with the Judge who clasped both his hands over the Chinaman's and they had a whispered conversation and then the Judge went into Court, the case was called and the defendant acquitted. The Judge admits that he received some money from the Chinaman as above, but says that it was rent which was owing.

The Respondent's accounts to the Auditor-General are very unsatisfactory. He is required by law to send monthly to the Treasury all fines and costs received by him and to furnish monthly an account of his receipts and disbursements to the Auditor. It so happens that since 1st Jan'y, 1887, but one amount which his account to the Auditor shows was remitted to the Treasury corresponds with the amount actually remitted, and the sum total of actual remittances for this period *exceed* by $150.70 the sum called for by his reports.

The fact is he made remittances hap-hazard and, at the end of every month, got from the Deputy Sheriff the fines which had been paid in and from it paid out shares of fines, and for services of process to unpaid police, etc,, and made up an account which contained only the net amounts and did not state the payments made by him.

The Judge says he was unable to send these accounts monthly to the Auditor as there was no one in the district before whom he could swear to the correctness of the account and he had to await the coming of the Circuit Judge before he could do this. But this is no reason why the accounts should not correspond with the amount remitted even if not sworn at the time they were made up.

So far from this balance in his favor being creditable to the Respondent, as urged by his counsel, it makes it impossible to ascertain except by other data not accessible, whether the account is a correct statement of all sums received by him.

Upon the admitted facts we think the usefulness of Mr. Kalai as Police Justice of Kohala is at an end and consider that good cause has been shown for his removal from office—and it is so ordered.

Attorney-General Ashford for prosecution; J. L. Kaulukou for respondent.

March 12, 1888.

In the above case it appeared in evidence that after the acquittal of Freitas, he went to the Deputy Sheriff, J. W. Moanauli, for his bail money of $200. It was handed to him and he counted out $50 on the table and pushed it over to the Deputy Sheriff who asked if it was a bribe, and said if it was so intended the door was open for him to get out of. On Freitas saying that he wished the witnesses who had sworn against him sued for their accounts in his store, amounting to about $95, the Deputy Sheriff, who is an atttorney, licensed for the lower courts, took it as a retainer. None of these accounts have as yet been collected by the Deputy Sheriff. This affair has a bad appearance. It is not proper for a prosecuting officer to act as an attorney in a civil matter which has a close connection with a criminal case.

We deem it our duty to cancel Mr. Moanauli's license to practice—and it is so ordered.

Honolulu, March 12, 1888.